

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY
Division of Law - 5th Floor
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101

By: Marianne W. Greenwald
Deputy Attorney General
Tel. No. (973) 648-4876

FILED

JUL 11 2007

BOARD OF PHARMACY

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PHARMACY

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

HOWARD WERTHEIM, R.P.

TO PRACTICE PHARMACY IN THE
STATE OF NEW JERSEY

:
: Administrative Action
:
:
:
:
:
:
:
:
:

CONSENT ORDER

This matter was opened to the New Jersey State Board of Pharmacy upon a request for reinstatement of respondent's license to practice pharmacy. Respondent had entered into a Consent Order with the Board of Pharmacy in February of 2004, whereby he voluntarily surrendered his pharmacy license due to his possession of Percocet, Vicodin, Hydrocodone and Adderall all Schedule II Controlled Dangerous Substances from the active drug stock of Panther Valley Pharmacy. Respondent agreed that to be considered for relicensure he would be required to demonstrate competence and compliance with the Consent Order prior to resuming the practice of pharmacy.

In November of 2006 respondent submitted to the Board documentation as to his past treatment for substance abuse and his present efforts to maintain his sobriety. It appearing that respondent has completed a treatment program, continues to attend support group meetings, is under the care of a therapist and continues to have negative drug and alcohol screens, and respondent having satisfied the

Board of his intention to continue in the treatment regimen set forth below; and respondent wishing to resolve this matter without the necessity of further formal proceedings, and the Board finding the within Order sufficiently protective of the public health, safety and welfare and for good cause shown,

ACCORDINGLY, IT IS on this 3RD day of JULY, 2006,¹

ORDERED AND AGREED,

1. Respondent shall submit documentation of his successful completion of 30 continuing education credits and pay all fees. Thereafter, the license to practice pharmacy of Howard Wertheim shall be reinstated and placed on a probationary status for one (1) year subject to compliance with paragraphs 2 through 10 herein. If respondent violates any of the provisions of paragraphs 2 through 10 herein, the Board may initiate proceedings to revoke his license to practice pharmacy in addition to any action pursuant to paragraph 8 below.

2. (a) Respondent shall submit to random urine monitoring a minimum of one (1) time per week at a laboratory facility approved by the Board for the duration of the probation. The urine monitoring shall be conducted with direct witnessing of the taking of the samples as designed by the laboratory facility. The initial drug screen shall utilize appropriate screening techniques and all confirming tests and/or secondary tests will be performed by gas/chromatography/mass spectrometry (G.C./M.S.). The testing procedure shall include a forensic chain of custody protocol to ensure sample integrity and to provide documentation in the event of a legal challenge.

(b) All test results including any secondary test results shall be provided directly to Joanne Boyer, Executive Director of the

Board, or her designee in the event she is unavailable. The Board also will retain sole discretion to modify the manner of testing in the event technical developments or individual requirements indicate that a different methodology or approach is required in order to guarantee the accuracy and reliability of the testing.

(c) Any failure by respondent to submit or provide a urine sample within twenty-four (24) hours of a request will be deemed to be equivalent to a confirmed positive urine test. In the event respondent is unable to appear for a scheduled urine test or provide a urine sample due to illness or other impossibility, consent to waive that day's test must be secured from Joanne Boyer, or her designee. Personnel at the lab facility shall not be authorized to waive a urine test. In addition, respondent must provide the Board with written substantiation of his inability to appear for a test within two (2) days, e.g., a physician's report attesting that he was so ill that he was unable to provide the urine sample or appear for the test. "Impossibility" as employed in this provision shall mean an obstacle beyond the control of respondent that is so insurmountable or that makes appearance for the test or provision of the urine sample so infeasible that a reasonable person would not withhold consent to waive the test on that day.

(d) In the event respondent will be out of the State for any reason, the Board shall be so advised so that arrangements may be made at the Board's discretion for alternate testing. The Board may, in its sole discretion, modify the frequency of testing or method of testing during the monitoring period.

(e) Any urine test result showing creatinine levels below 20 mg/dL and a specific gravity below 1.009 shall create a rebuttable

presumption of a confirmed positive urine test. Such specimen shall be immediately subjected to the confirming G.C./M.S. test.

(f) Respondent shall familiarize himself with all foods, food additives or other products (such as poppy seeds) which may affect the validity of urine screens, be presumed to possess that knowledge, and shall refrain from the use of such substances. Ingestion of such substances shall not be an acceptable reason for a positive urine screen and/or failure to comply with the urine monitoring program.

3. Respondent shall continue in treatment with Thomas M. Sprague, D.C., and shall comply with any recommended therapeutic regimen for treatment or counseling. Respondent shall be responsible for ensuring that any treating psychiatrist/psychologist, and any other person(s) providing therapy for his substance abuse, provide quarterly reports regarding his progress in counseling and immediate reports (within 24 hours of awareness) of any confirmed positive urine test or any evidence of a relapse or "slip" directly to the Board.

4. Respondent shall attend support groups, including NA or AA not less than one (1) time per week. Respondent shall provide evidence of attendance at such groups directly to the Board. If respondent discontinues attendance at any of the support groups without obtaining approval of the Board, he shall be deemed in violation of this Order.

5. Respondent shall abstain from the use of alcohol and controlled dangerous substances and shall not possess any controlled dangerous substances except pursuant to a bona fide prescription written by a physician or dentist for good medical or dental cause in his own treatment. In addition, respondent shall advise any and all treating physicians and/or dentists of his history of substance abuse.

Respondent shall cause any physician or dentist who prescribes medication for him which is a controlled dangerous substance to provide a written report to the Board together with patient records indicating the need for such medication. Such report shall be provided to the Board no later than two (2) days subsequent to the prescription in order to avoid confusion which may be caused by a confirmed positive urine test as a result of such medication.

6. Respondent shall provide any and all releases to any and all parties who are participating in the monitoring, treatment or other program as outlined in this order, as may be required in order that all reports, records, and other pertinent information may be provided to, and utilized by the Board in a timely manner. Respondent's signature on this Order indicates his agreement that the Board may utilize any documents and information received, in connection with any proceedings regarding his license.

7. Respondent shall give written notice to the Board, prior to beginning or changing any employment. Respondent shall provide a written copy of this Order to any employer which provides access to pharmaceuticals or pharmaceutical records and shall ensure that the employer notifies the Board in writing that he or she has read the Order. This paragraph only applies if respondent works in a pharmacy setting where he would have access to prescription drugs.

8. (a) Respondent shall be subject to an order of automatic suspension of his license upon the Board's receipt of any information which the Board, in its sole discretion, deems reliable demonstrating that respondent has failed to comply with any of the conditions set forth in this Consent Order, including but not limited to report of a confirmed positive urine, or a prima facie showing of a relapse or recurrence of alcohol or drug abuse.

(b) Respondent shall have a right to apply for removal of the automatic suspension on ten (10) days notice to the Board and to

the Attorney General. The Board may hold a hearing on that application before the full Board or before a committee of the Board. In the event a committee hears the application, its action shall be subject to ratification of the full Board at its next scheduled meeting. In a hearing seeking removal of the automatic suspension, any confirmed positive urine shall be presumed valid.

9. Respondent shall not be a pharmacist-in-charge for a one year period from the entry of this Order, and until further order of the Board, shall be barred from being a permit holder either directly or indirectly through connection with any person related by blood or marriage.

10. Prior to the termination of probation, respondent shall appear before the Board or a Committee thereof to determine whether the respondent shall be permitted to practice without any further conditions to protect the public's welfare.

NEW JERSEY STATE BOARD OF PHARMACY

By:

Edward G. McGinley
Edward G. McGinley, R.Ph.
Board President

I have read the above Order and understand its terms. I consent to the entry of this Order by the State Board of Pharmacy.

Howard Wertheim
Howard Wertheim R.Ph.
Respondent

Consent as to form and entry.

Angelo Cifaldi
Angelo Cifaldi, Esq.
Attorney for Howard Wertheim, R.Ph.